

# **Exhibit 3**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3  
4 FEDERAL TRADE COMMISSION and )  
5 THE PEOPLE OF THE STATE OF )  
6 NEW YORK, by LETITIA JAMES, ) Matter No.  
7 Attorney General of the State ) 1:17-cv-00124-LLS  
8 of New York, ) CONFIDENTIAL  
9 Plaintiffs, ) ATTORNEYS' EYES  
10 v. ) ONLY  
11 QUINCY BIOSCIENCE HOLDING )  
12 COMPANY, et al., )  
13 Defendants. )  
14 -----)

15  
16 Thursday, August 20, 2020  
17 Via Zoom  
18

19 The above-entitled matter came on for the  
20 30(b)(6) deposition of MARK YANCEY UNDERWOOD, pursuant  
21 to notice, at 9:43 a.m., Central time; 10:43 a.m.,  
22 Eastern time.  
23  
24  
25

Underwood - 30(b)(6) - Confidential  
FTC, et al. v. Quincy Bioscience Holding, et al.

8/20/2020

1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4 ANNETTE SOBERATS, ESQ.

5 MICHELLE RUSK, ESQ.

6 EDWARD GLENNON, ESQ.

7 Federal Trade Commission

8 600 Pennsylvania Avenue, N.W.

9 Washington, DC 20850

10 (202) 326-2921

11 asoberats@ftc.gov

12

13

14 ON BEHALF OF THE STATE OF NEW YORK:

15 KATE MATUSCHAK, ESQ.

16 Assistant Attorney General for the

17 State of New York

18 Consumer Frauds and Protection Bureau

19 120 Broadway

20 New York, New York 10271

21 (212) 416-6189

22 kate.matuschak@ag.ny.gov

23

24

25

Underwood - 30(b)(6) - Confidential  
FTC, et al. v. Quincy Bioscience Holding, et al.

8/20/2020

1 ON BEHALF OF CORPORATE DEFENDANTS:

2 GEOFFREY W. CASTELLO, ESQ.

3 JACLYN M. METZINGER, ESQ.

4 GLENN T. GRAHAM, ESQ.

5 Kelley Drye & Warren

6 One Jefferson Road

7 Second Floor

8 Parsippany, New Jersey 07054

9 (973) 503-5922

10 gcastello@kelleydrye.com

11

12

13 ON BEHALF OF THE DEFENDANT UNDERWOOD:

14 MICHAEL B. DeLEEuw, ESQ.

15 TAMAR WISE, ESQ.

16 Cozen O'Connor

17 45 Broadway

18 16th Floor

19 New York, New York 10006

20 (212) 908-1331

21 mdeleeuw@cozen.com

22

23

24 ALSO PRESENT:

25 William Ducklow, FTC

Underwood - 30(b)(6) - Confidential  
FTC, et al. v. Quincy Bioscience Holding, et al.

8/20/2020

1 Q. And this is dated July 8th, 2010, correct?

2 A. It is.

3 Q. So for ease of reference, I'm going to refer to  
4 this report as the pepsin digestion report. I have a  
5 few questions about it.

6 A. Sure. But this -- just for note, this is part  
7 of a larger project, because this is not a digestion  
8 study.

9 Q. Okay.

10 A. This is an allergenicity study.

11 Q. Okay.

12 A. And I guess just for the record, although this  
13 is 26 pages, I believe the entire allergenicity study is  
14 much longer. So I don't think this is the whole thing,  
15 but we may be getting to that as well, but --

16 Q. Okay. Who initiated the idea to conduct a study  
17 assessing the stability of apoaeguorin in pepsin assays?

18 A. Well, we pursued an allergenicity study with  
19 Dr. Goodman's lab.

20 Q. Okay. But that doesn't answer my question. Who  
21 came up with the idea to conduct a study assessing the  
22 stability of apoaeguorin in pepsin digestion assays?

23 MR. CASTELLO: Objection.

24 THE WITNESS: That determination was made in  
25 conjunction with -- with advice from counsel.

Underwood - 30(b)(6) - Confidential  
FTC, et al. v. Quincy Bioscience Holding, et al.

8/20/2020

1 BY MS. SOBERATS:

2 Q. And why was this study done?

3 MR. CASTELLO: I'm going to caution the witness  
4 that if in order to answer that question he would be  
5 required to divulge any communications that the company  
6 had with counsel, that he not answer that question.

7 THE WITNESS: I'll have to defer to the advice  
8 from counsel.

9 BY MS. SOBERATS:

10 Q. How were you involved in this study, Mr.  
11 Underwood?

12 A. I guess I would be considered, on behalf of the  
13 company, the sponsor.

14 Q. Did you have any input in the design of the  
15 study?

16 MR. CASTELLO: Objection.

17 THE WITNESS: In conjunction with the advice of  
18 counsel.

19 BY MS. SOBERATS:

20 Q. You were not -- sorry, I take that back.

21 Did you review this draft report?

22 MR. CASTELLO: Objection.

23 THE WITNESS: I did.

24 BY MS. SOBERATS:

25 Q. And did you participate in drafting this report?

Underwood - 30(b)(6) - Confidential  
FTC, et al. v. Quincy Bioscience Holding, et al.

8/20/2020

1 different questions that we had, we would consult with  
2 counsel to make sure we, you know -- I don't know, I  
3 guess were doing it right -- "right".

4 BY MS. SOBERATS:

5 Q. Did you discuss the --

6 A. I'm sorry.

7 Q. Did you discuss the FDA warning letter at board  
8 meetings?

9 A. Yes.

10 Q. And what was the nature of those discussions?

11 MR. CASTELLO: I'm going to caution the witness  
12 that if in order to answer that question he would be  
13 required to divulge communications that the company had  
14 with its counsel, that he not answer that question.

15 THE WITNESS: Geoff is correct.

16 BY MS. SOBERATS:

17 Q. So after the company -- well, did the company  
18 engage in any corrective actions in response to the FDA  
19 warning letter?

20 A. Yes.

21 MR. CASTELLO: Objection. I'm going to caution  
22 the witness that if in order to answer that question he  
23 would be required to divulge any communications that the  
24 company had with its counsel, that he not answer it.

25 MR. DELEEUEW: And this is Michael deLeeuw, I

Underwood - 30(b)(6) - Confidential  
FTC, et al. v. Quincy Bioscience Holding, et al.

8/20/2020

1 MR. CASTELLO: That's okay. Not a problem.

2 MS. SOBERATS: So would the court recorder  
3 please read back my last question.

4 (The record was read as follows:)

5 "QUESTION: So according to the Defendants'  
6 interrogatory responses, from approximately February  
7 2012 through June 2016, the packaging of Prevagen  
8 included a bar graph concerning data from the Madison  
9 Memory Study. If you look at this back label on the  
10 complaint here on page 10, is this the bar graph that  
11 was included on the Prevagen label?"

12 THE WITNESS: Yes.

13 MS. SOBERATS: Thank you. And, Geoff, this  
14 would be interrogatory 8, and the responses -- I took  
15 the information from Defendants' supplemental responses  
16 and objections to our second set of interrogatories.  
17 And this document is dated July 6th, 2020.

18 MR. CASTELLO: Thank you.

19 BY MS. SOBERATS:

20 Q. Why did Quincy stop using this chart on the  
21 Prevagen label after -- sorry, why did Quincy stop using  
22 this chart on the Prevagen label?

23 MR. CASTELLO: I'm going to caution the witness  
24 that if in order to answer that question he would be  
25 required to divulge communication that the company had

Underwood - 30(b)(6) - Confidential  
FTC, et al. v. Quincy Bioscience Holding, et al.

8/20/2020

1 with its counsel, that he not answer the question.

2 THE WITNESS: Okay, just to be clear, when you  
3 refer to the back label, you mean the back side of the  
4 box?

5 BY MS. SOBERATS:

6 Q. Yes.

7 A. As opposed to the sticky label?

8 Q. Yes.

9 A. That would go in the cylinder?

10 Q. This is the back side of the box, yes.

11 A. Okay. This was removed because we had to put on  
12 a security tag. I guess it's -- is it a radio frequency  
13 tag I think they're called.

14 Q. And is this chart still being used in any of  
15 Quincy's marketing?

16 MR. CASTELLO: Objection.

17 THE WITNESS: Forms of it, yes, but I don't know  
18 if it's exactly like what you see. Just like the last  
19 image was, you know, a screenshot, which was  
20 approximating what was in the TV commercial, but --

21 BY MS. SOBERATS:

22 Q. And in which marketing is a chart of this nature  
23 being used?

24 A. Well, it basically may still exist in some  
25 old -- old collateral materials.

Underwood - 30(b)(6) - Confidential  
FTC, et al. v. Quincy Bioscience Holding, et al.

8/20/2020

1 DISTRICT OF COLUMBIA, to wit:

2

3 I, Sally Jo Quade, CERT, the officer before whom  
4 the foregoing deposition was taken, do hereby certify  
5 that the within-named witness personally appeared before  
6 me at the time and place herein set out, and after  
7 having been duly sworn by me, according to law, was  
8 examined by counsel.

9 I further certify that the examination was  
10 recorded stenographically by me and this transcript is a  
11 true record of the proceedings.

12 I further certify that I am not of counsel to  
13 any of the parties, nor an employee of counsel, nor  
14 related to any of the parties, nor in any way interested  
15 in the outcome of this action.

16 As witness my hand and notarial seal this 24th  
17 day of August, 2020.

18

19

20

21



Sally Jo Quade, CERT  
Notary Public

22

23

24 MY COMMISSION EXPIRES:

25

7/14/2023

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FEDERAL TRADE COMMISSION and

THE PEOPLE OF THE STATE OF NEW  
YORK, by LETITIA JAMES,  
Attorney General of the State of New York,

Plaintiffs,

v.

QUINCY BIOSCIENCE HOLDING  
COMPANY, INC., a corporation;

QUINCY BIOSCIENCE, LLC, a limited  
liability company;

PREVAGEN, INC., a corporation  
d/b/a SUGAR RIVER SUPPLEMENTS;

QUINCY BIOSCIENCE  
MANUFACTURING, LLC, a limited liability  
company;

MARK UNDERWOOD, individually and as  
an officer of QUINCY BIOSCIENCE  
HOLDING COMPANY, INC., QUINCY  
BIOSCIENCE, LLC, and PREVAGEN, INC.;  
and

Defendants.

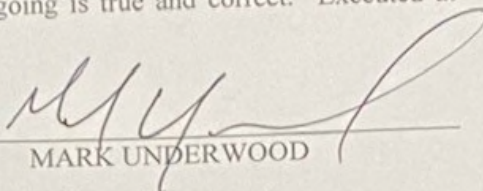
Case No. 1:17-cv-00124-LLS

**ERRATA SHEET FOR THE TRANSCRIPT  
OF THE DEPOSITION OF MARK UNDERWOOD  
AUGUST 20, 2020**

I, Mark Underwood, hereby certify that I have read and examined the transcript of the Federal Rule of Civil Procedure 30(b)(6) deposition of Mark Underwood, which occurred on August 20, 2020, and hereby make the following corrections to the transcript of my deposition:

| <b>PAGE</b> | <b>LINE(S)</b> | <b>CORRECTION</b>                             | <b>REASON</b>          |
|-------------|----------------|---|------------------------|
| 38          | 21             | Replace<br>“allergistic” with<br>“allergenic” | Transcription<br>Error |
| 55          | 20             | Replace<br>“Neutrics” with<br>“Neutricks”     | Typo                   |
| 56          | 3, 9           | Replace<br>“Neutrics” with<br>“Neutricks”     | Typo                   |
| 57          | 4              | Replace<br>“Helina” with<br>“Halina”          | Typo                   |
| 58          | 8              | Replace<br>“Helina” with<br>“Halina”          | Typo                   |
| 59          | 6, 15          | Replace<br>“Helina” with<br>“Halina”          | Typo                   |
| 60          | 2              | Replace<br>“Helina” with<br>“Halina”          | Typo                   |
| 62          | 16             | Replace<br>“Helina” with<br>“Halina”          | Typo                   |
| 63          | 20             | Replace<br>“Helina” with<br>“Halina”          | Typo                   |
| 69          | 24             | Replace<br>“Helina” with<br>“Halina”          | Typo                   |

I declare under penalty of perjury that the foregoing is true and correct. Executed at  
Madison, Wisconsin on September 21, 2020.

  
MARK UNDERWOOD

STATE OF WISCONSIN  
COUNTY OF DAVENPORT  
Circuit Court  
Case No. 17CV00124  
In re: Mark Underwood  
Defendant  
STATE OF WISCONSIN  
COUNTY OF DAVENPORT  
Circuit Court  
Case No. 17CV00124  
In re: Mark Underwood  
Defendant  
STATE OF WISCONSIN  
COUNTY OF DAVENPORT  
Circuit Court  
Case No. 17CV00124  
In re: Mark Underwood  
Defendant  
STATE OF WISCONSIN  
COUNTY OF DAVENPORT  
Circuit Court  
Case No. 17CV00124  
In re: Mark Underwood  
Defendant

ERRATA SHEET FOR THE TRANSCRIPT  
OF THE DEPOSITION OF MARK UNDERWOOD  
AUGUST 24, 2020